

Regular Session, 2010

SENATE BILL NO. 514

BY SENATOR MURRAY

MALPRACTICE. Provides relative to the Patient's Compensation Fund and its administration by the Patient's Compensation Fund Oversight Board. (8/15/10)

AN ACT

To amend and reenact R.S. 40:1299.44(A)(2), (5), and (6) and (D)(1)(c) and (2)(b)(iii), relative to the Patient's Compensation Fund and the Patient's Compensation Fund Oversight Board; to provide with respect to exemption of the board and fund from rate regulation by the commissioner of insurance; to provide relative to the annual surcharge, including the manner of its determination; to provide relative to retention of monies in the fund; to provide with respect to composition of the board and to otherwise provide with respect to its authority; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.44(A)(2), (5), and (6) and (D)(1)(c) and (2)(b)(iii) are hereby amended and reenacted to read as follows:

§1299.44. Patient's Compensation Fund

A.

\* \* \*

(2)(a) In order to provide monies for the fund, an annual surcharge shall be levied on all health care providers in Louisiana qualified under the provisions of this Part.

1                   **(b) The board shall cause to be prepared an annual actuarial study of**  
2                   **the fund by a qualified competent actuary.**

3                   ~~(b)~~ **(c) The board and the fund shall be exempt from rate regulation by**  
4                   **the commissioner of insurance.** The surcharge ~~rates~~ shall be determined by the  
5                   ~~commissioner of insurance~~ **board in a public meeting held pursuant to the**  
6                   **provisions of R.S. 42:4.1 through 12** based upon actuarial principles and in  
7                   ~~accordance with an application for rates or rate changes, or both, filed by the~~  
8                   ~~Patient's Compensation Fund Oversight Board, established and authorized pursuant~~  
9                   ~~to Subsection D of this Section.~~ **reports, experience, and prudent judgment of the**  
10                  **board. The board shall give at least fifteen days prior written or electronic**  
11                  **notice of the meeting and provide an opportunity for public comment at the**  
12                  **meeting prior to determining rates.**

13                  ~~(c)~~ **(d) The application for rate changes filed by the board shall be submitted**  
14                  ~~to the commissioner of insurance at least annually on the basis of an annual actuarial~~  
15                  ~~study of the patient's compensation fund.~~ **surcharge rates shall not be excessive,**  
16                  **inadequate, or unfairly discriminatory. In determining whether surcharge rates**  
17                  **are excessive, inadequate, or unfairly discriminatory, consideration may be**  
18                  **given to the following items:**

19                  **(i) Basic rate factors. Due consideration shall be given to past and**  
20                  **prospective loss and expense experience, catastrophe hazards and contingencies,**  
21                  **events, or trends, and all other relevant factors and judgments. Fines and**  
22                  **penalties against a health care provider, whether levied by a court or regulatory**  
23                  **body, shall not be used by the board or considered in any manner in the loss or**  
24                  **expense experience for the purpose of determining surcharge rates.**

25                  **(ii) Classification. Risks may be grouped by classification for the**  
26                  **establishment of rates. Classification rates may be modified for individual risks**  
27                  **in accordance with an experience-rating plan or schedule which apportions a**  
28                  **greater percentage of required surcharge increases to those health care**  
29                  **providers who generate greater-than-expected losses.**

1                    (iii) Expenses. The expense provisions shall reflect the operating  
2                    methods of the board and the fund, the past expense experience, and anticipated  
3                    future expenses.

4                    (iv) Contingencies. The rates may contain a provision for contingencies.

5                    (v) Other relevant factors. Any other factors available at the time of  
6                    determining the rates.

7                    ~~(d)~~ (e) The surcharge shall be collected on the same basis as premiums by  
8                    each insurer, the risk manager, and surplus line agent.

9                    ~~(e)~~ (f) The board shall collect the surcharge from health care providers  
10                    qualified as self-insureds.

11                    ~~(f)~~ (g) The surcharge for self-insureds shall be the **same** amount determined  
12                    by the board ~~in accordance with regulations promulgated under the Administrative~~  
13                    ~~Procedure Act and in accordance with the rate set by the commissioner of insurance~~  
14                    to be the amount of surcharge which the health care provider would reasonably be  
15                    required to pay were his qualification based upon filing a policy of malpractice  
16                    liability insurance.

17                    \*           \*           \*

18                    (5)(a) All expenses of collecting, protecting, and administering the fund shall  
19                    be paid from the fund.

20                    (b) The functions of collecting, administering, and protecting the fund,  
21                    including all matters relating to **determining surcharge rates**, establishing reserves,  
22                    the evaluating and settlement of claims, and relating to the defense of the fund, shall  
23                    be carried out by the board.

24                    (c) The board shall prepare quarterly statements of the financial  
25                    condition of the fund and publish the statements on the board's website.

26                    ~~(c)~~ (d) The function of selecting the list of attorney names from which the  
27                    selection of the attorney chairman of the medical review panels is to be made shall  
28                    be the responsibility of the office of the clerk of the Louisiana Supreme Court.

29                    ~~(d)~~ (e) These expenses of the board and office of the clerk of the Louisiana

Supreme Court shall be paid from the fund by the state treasurer in accordance with the law.

~~(e)~~ **(f)** The fund shall be a budget unit of this state.

~~(f)~~ **(g)** The legislature shall appropriate from the fund sufficient monies for the carrying out by the board and office of the clerk of the Louisiana Supreme Court of the duties, functions, and responsibilities imposed upon them in this Section and shall also appropriate all remaining monies in the fund for use by the board to pay approved claims based upon final judgments, court-approved settlements, final arbitration awards, and judgments awarding medical care and related benefits rendered pursuant to R.S. 40:1299.43 and vouchers drawn by the board pursuant to a judgment reciting that a patient is in need of future medical and related benefits under the provisions of R.S. 40:1299.43 in accordance with Paragraph (7) of this Subsection and in accordance with Subsection B of this Section.

~~(g)~~ **(h)** Any purchases from the fund of furniture, fixtures, equipment, or other property shall be specifically designated, by such method of identification as is reasonable and practical for each item, as the property of the fund.

(6)(a) At all times the fund shall be maintained so as to provide ~~a surplus~~ **assets** of **at least** thirty percent of the ~~annual surcharge premiums, reserves established for individual claims, reserves established for incurred but not reported claims, and expenses.~~ **fund's outstanding liabilities, calculated using the most recent actuarial study and report for the fund.**

(b) No reduction in the surcharge shall be made unless such ~~surplus~~ **balance on hand** is available in the fund.

\* \* \*

D.(1)

\* \* \*

(c) The ninth member of the board shall be appointed from nominees provided by the principal professional ~~organization of insurance executives,~~ **insurance agents organizations** and this member ~~must~~ **shall** be ~~an executive of a~~

**familiar with** property and casualty insurance ~~company that is~~ **and** licensed in this state ~~which does not sell medical professional liability insurance.~~ **as a producer.**

\* \* \*

(2)

\* \* \*

(b) In addition to such other powers and authority elsewhere expressly or impliedly conferred on the board by this Part, the board shall have the authority, to the extent not inconsistent with the provisions of this Part, to:

\* \* \*

(iii) Collect, accumulate, and maintain claims experience data from enrolled health care providers and insurance companies providing professional liability insurance coverage to health care providers in this state, in such form as may be necessary or appropriate to permit the ~~fund~~ **board** to ~~develop~~ **determine** appropriate surcharge rates for the fund.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Greg Waddell.

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#### DIGEST

Murray (SB 514)

Present law establishes the Patient's Compensation Fund as a special fund in the state treasury, to be funded by annual surcharges on qualified health care providers, for the purpose of paying medical malpractice claims over \$100,000. Provides that the fund is generally administered by the Patient's Compensation Fund Oversight Board with surcharge rates determined by the commissioner of insurance based upon actuarial principles.

Proposed law changes present law as follows:

- (1) Present law provides that the annual surcharge levied on qualified health care providers in this state shall be determined by the commissioner of insurance based upon actuarial principles and in accordance with an application for rates or rate changes filed by the Patient's Compensation Fund Oversight Board. Specifies that application for rate changes filed by the board shall be submitted to the commissioner at least annually on the basis of an annual actuarial study of the patient's compensation fund.

Proposed law makes the board and the fund exempt from rate regulation by the commissioner. Requires the board to cause to be prepared an annual actuarial study of the fund by a qualified competent actuary. Provides that the surcharge shall be determined by the board in a public meeting, held pursuant to present law, relative to open meetings and occasions for executive sessions, based upon actuarial

- principles and reports, experience, and prudent judgment of the board. Requires the board to give at least 15 days prior written or electronic notice of the meeting and to provide an opportunity for public comment at the meeting prior to determining rates.
- (2) Proposed law provides that surcharge rates shall not be excessive, inadequate, or unfairly discriminatory. Specifies that, in determining this, consideration may be given to the following:
- (a) Basic rate factors. Provides that due consideration shall be given to past and prospective loss and expense experience, catastrophe hazards and contingencies, events, or trends, and all other relevant factors and judgments. Provides that fines and penalties against a health care provider, however levied, shall not be used by the board or considered in any manner in the loss or expense experience for the purpose of determining surcharge rates.
  - (b) Classification. Allows risks to be grouped by classification for the establishment of rates. Allows classification rates to be modified for individual risks in accordance with an experience-rating plan or schedule which apportions a greater percentage of required surcharge increases to those health care providers who generate greater-than-expected losses.
  - (c) Expenses. Requires that the expense provisions shall reflect the operating methods of the board and the fund, the past expense experience, and anticipated future expenses.
  - (d) Contingencies. Allows the rates to contain a provision for contingencies.
  - (e) Other relevant factors. Allows for use of any other factors available at the time of determining the rates.
- (3) Present law provides that the surcharge for self-insureds shall be the amount determined by the board in accordance with regulations promulgated under the APA and in accordance with the rate set by the commissioner of insurance to be the amount of surcharge which the health care provider would reasonably be required to pay were his qualification based upon filing a policy of malpractice liability insurance.
- Proposed law provides that the amount of the surcharge shall be the same amount determined by the board to be the amount of surcharge which the health care provider would reasonably be required to pay were his qualification based upon filing a policy of malpractice liability insurance, deleting the requirement that the amount of such surcharge be determined in accordance with regulations promulgated under the APA and with the rate set by the commissioner.
- (4) Proposed law requires the board to prepare quarterly statements of the financial condition of the fund and publish the statements on the board's website.
- (5) Present law provides that at all times the fund shall be maintained so as to provide a surplus of 30% of the annual surcharge premiums, reserves established for individual claims, reserves established for incurred but not reported claims, and expenses. Further specifies that no reduction in the surcharge shall be made unless such surplus is available in the fund.

Proposed law instead provides that at all times the fund shall be maintained so as to provide assets on hand of at least 30% of the fund's outstanding liabilities, calculated using the most recent actuarial study and report for the fund. Further specifies that no reduction in the surcharge shall be made unless such balance on hand is available in the fund.

- (6) Present law provides for a nine-member board, including one member appointed from nominees provided by the principal professional organization of insurance executives. Requires that this member be an executive of a property and casualty insurance company that is licensed in this state which does not sell medical professional liability insurance.

Proposed law instead provides for a member appointed from nominees provided by the principal professional insurance agents organizations. Requires that this member be familiar with property and casualty insurance and licensed in this state as a producer.

- (7) Present law provides that among the powers and duties of the board is the authority to collect, accumulate, and maintain claims experience data from enrolled health care providers and insurance companies providing professional liability insurance coverage to health care providers in this state, in such form as may be necessary or appropriate to permit the fund to develop appropriate surcharge rates for the fund.

Proposed law instead provides that among the powers and duties of the board is the authority to collect, accumulate, and maintain claims experience data from enrolled health care providers and insurance companies providing professional liability insurance coverage to health care providers in this state, in such form as may be necessary or appropriate to permit the board to determine appropriate surcharge rates for the fund.

Effective August 15, 2010.

(Amends R.S. 40:1299.44(A)(2), (5), and (6) and (D)(1)(c) and (2)(b)(iii))